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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,751	12/29/2003	David Shur	2001-0455	6143
26652 7590 01/04/2007 AT&T CORP. ROOM 2A207 ONE AT&T WAY BEDMINSTER, NJ 07921			EXAMINER PEYTON, TAMMARA R	
			ART UNIT 2182	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/747,751

Applicant(s)

SHUR ET AL.

Examiner

Tammara R. Peyton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 16-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/27/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8 and 16-27 rejected under 35 U.S.C. 102(e) as being anticipated by Norrgard et al., (US 2005/0105475).

As per claims, 1,4-8 and 16, 18-21, and 24-27, Norrgard teaches a method of communicating comprising the steps of:

receiving a communication from a client (504 or 506, Fig.5);
instructing at least one server (central node, 502) to begin a bandwidth probe in response to receiving the communication from the client;
receiving results of the bandwidth probe in response to instructing the at least one server; and [105-106]
sending a redirect message [108-112] to the client in response to receiving the results of the bandwidth probe. (Abstract, pgs.5-8)

As per claims 2, 3, 22, and 23, Norrgard teaches wherein the step of receiving the communication comprises receiving an HTTP or RSTP communication from the client.

As per claim 17, Norrgard teaches generating a train of packets from each of the plurality of servers to the client; receiving the train of packets from the client in each of the plurality of servers; and computing bandwidth in response to generating the train of packets and in response to receiving the train of packets.

Claims 1-8 and 16-27 rejected under 35 U.S.C. 102(e) as being anticipated by Watson et al., (US 2004/0049574).

As per claims, 1, 4-8 and 16-21, and 24-27, Watson teaches a method of communicating comprising the steps of:

receiving a communication from a client (2, Fig. 1);
instructing at least one server (web server, 1, Fig. 1) to begin a bandwidth probe in response to receiving the communication from the client;
receiving results of the bandwidth probe in response to instructing the at least one server; and [122]
sending a redirect message [122-127] to the client in response to receiving the results of the bandwidth probe. (Abstract, pgs.7-10)

As per claims 2, 3, 22, and 23, Watson teaches wherein the step of receiving the communication comprises receiving an HTTP or RSTP communication from the client.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 16-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Colby et al., (US 6,449,647).

As per claims, 1-8 and 16-27, Colby teaches a method of communicating comprising the steps of:

receiving a communication from a client (end station, Fig. 1a);

instructing at least one server (web server, 100, Fig. 1b) to begin a bandwidth probe in response to receiving the communication from the client;

receiving results of the bandwidth probe in response to instructing the at least one server; and (col. 5, lines 48-col. 8, lines 1-37)

sending a redirect message to the client in response to receiving the

results of the bandwidth probe. (Abstract, col. 9, lines 5- col. 10, lines 1-31, col. 15, lines 41-57, Figs. 1a-1c and 2)

Claims 1-8 and 16-27 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 03/098464.

As per claims, 1-8 and 16-27, WO 03/098464 teaches a method of communicating comprising the steps of:

receiving a communication from a client (Fig. 1a and 10);
instructing at least one server to begin a bandwidth probe in response to receiving the communication from the client;
receiving results of the bandwidth probe in response to instructing the at least one server; and (pg. 5, lines 16-pg. 6, lines 1-18)
sending a redirect message to the client in response to receiving the results of the bandwidth probe. (Abstract, pg. 19, lines 14- page 21, lines 1-15)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tammara Peyton whose telephone number is (571) 272-4157. The examiner can normally be reached between 6:30 - 4:00 from Monday to Thursday, (I am off every first Friday), and 6:30-3:00 every second Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Huynh can be reached on (571) 272-4083. The fax phone number for the organization

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where this application or proceeding is assigned is (571) 273-8300. Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-2100.

Mailed responses to this action should be sent to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231.

Faxes for Official/formal (After Final) communications or for informal or draft communications (please label "PROPOSED" or "DRAFT") sent to:

(571) 273-8300

Hand-delivered responses should be brought to:

USTPO, Randolph Building, Customer Service Window

401 Dulany Street

Alexandria, VA 22314.

TAMMARA PEYTON
PRIMARY EXAMINER



Tammara Peyton

December 26, 2006